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7 IN THE UNITED STATES DISTRICT COURT  
8  
9 FOR THE DISTRICT OF ARIZONA

10 UNITED STATES OF AMERICA,	)	CR 15-1723 TUC RCC (DTF)
11 Plaintiff,	)	
12 v.	)	<b>MOTION IN LIMINE TO PRECLUDE</b>
13 Lonnie Ray Swartz,	)	<b>EVIDENCE OF DEFENDANT'S</b>
14 Defendant.	)	<b>ARMY SERVICE AND PERSONNEL</b>
	)	<b>RECORDS</b>

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15 It is expected that excludable delay under Title 18, United States Code, §  
16 3161(h)(1)(F) will occur because of this motion or an order based thereon.  
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18 The Defendant, Lonny Swartz, through undersigned counsel, Sean C. Chapman  
19 of THE LAW OFFICE OF SEAN C. CHAPMAN, P.C., and pursuant to Rules 104, 401  
20 and, 403 of the Federal Rules of Evidence, hereby moves to preclude the Government  
21 from introducing the following evidence at trial: 1) evidence of Agent Swartz's service  
22 and/or discharge from the United States Army; and 2) personnel records concerning  
23 Agent Swartz's performance while he attended the U.S. Border Patrol Academy or was  
24 employed by the U.S. Border Patrol. This motion is made for the following reasons.  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. FACTS RELEVANT TO THE RESOLUTION OF THIS MOTION

The Government has disclosed documentation relating to two areas the defense now seeks to preclude from introduction at trial, whether documentary or testimonial: Agent Swartz's service/discharge from the U.S. Army, and his personnel records while he was in training or employed by the U.S. Border Patrol.

#### *A. Agent Swartz's Army Service*

Agent Swartz enlisted in the U.S. Army on November 7, 1995, when he was 19 years of age. He was discharged on February 18, 1998. The documentation disclosed by the Government indicates that Swartz's discharge was effectuated "under other than honorable conditions" and "in lieu of trial by court-martial." The reason for this disposition was Swartz absenting himself from his military service for a lengthy period of time.<sup>1</sup>

#### *B. Agent Swartz's Personnel Records*

The Government's Disclosure includes approximately 230 pages of internal, personnel records pertaining to Agent Swartz's training and subsequent employment with the U.S. Border Patrol.<sup>2</sup> These records include Field Observation Reports, End of Phase Reports, results of various quizzes and exams, results of various proficiency tests, results of standardized tests, performance evaluations and summaries, counseling forms,

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<sup>1</sup> Bates No. 4718-4816.

<sup>2</sup> Bates No. 1481-1712.

1 certifications, acknowledgments of various policies, health records, sensitive vital  
2 information pertaining to Agent Swartz and his family members, various Memoranda  
3 written to and from Agent Swartz, and Records of Instruction.

## 4 **II. LAW**

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6 None of the records described above are relevant to any issue that the jury must  
7 decide in this case. The reason for and characterization of Swartz's discharge from the  
8 army has no bearing on whether, on October 10, 2012, he acted with criminal intent to  
9 commit second degree murder. Similarly, none of the documents in Swartz's personnel  
10 file make it any more or less likely that he acted with criminal intent when he  
11 discharged his firearm in this case.  
12

13  
14 Fed. R. Evid. 401 defines relevant evidence as that which has "any tendency to  
15 make a fact more or less probable than it would be without the evidence" and "is of  
16 consequence in determining the action." Because these subject areas are irrelevant, they  
17 are inadmissible at trial. Fed. R. Evid. 402 ("Irrelevant evidence is not admissible.").

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## 22 **III. CONCLUSION**

23 For all the foregoing reasons, this Court should enter an order precluding the  
24 Government from introducing at trial evidence of Agent Swartz's service and/or  
25 discharge from the army, or evidence from his U.S. Border Patrol personnel file.  
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1 Respectfully submitted this 16<sup>th</sup> day of January, 2018.

2 LAW OFFICES OF SEAN CHAPMAN, P.C.

3 BY: /s/ Sean Chapman  
4 Sean Chapman

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7  
8 Electronically mailed this 16<sup>th</sup> day of January 2018 to:

9 United States District Court

10 Wallace Kleindeinst

11 Mary Sue Feldmeier

12 United States Attorney's Office

13 Serena Lara  
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